

REPORT BY THE  
AUDITOR GENERAL  
OF CALIFORNIA

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**THE ADMINISTRATION OF THE STATE'S  
DOMESTIC VIOLENCE DIVERSION PROGRAM  
COULD BE IMPROVED**

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Domestic Violence Diversion Program  
Could Be Improved**

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**P-852, January 1990**

**Office of the Auditor General  
California**



Kurt R. Sjoberg, Acting Auditor General

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P-852

Honorable Elihu M. Harris, Chairman  
Members, Joint Legislative Audit Committee  
State Capitol, Room 2148  
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the need for improvement in the State's domestic violence diversion program. The report indicates that county probation departments need to develop and implement clear and comprehensive policies for managing domestic violence diversion cases. In addition, the Legislature should require counties to standardize the requirements for the duration and content of treatment programs. Finally, courts should not divert defendants who are not eligible for the domestic violence diversion program.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kurt R. Sjoberg".

Kurt R. Sjoberg  
Acting Auditor General

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## Summary

### Results in Brief

The purpose of the domestic violence diversion program established pursuant to Section 1000.6 et seq. of the Penal Code is to prevent further domestic violence by persons charged with misdemeanor acts of domestic violence by requiring these individuals to attend batterers' treatment programs. During our review, we noted the following conditions:

- County probation departments in the five counties we visited are not ensuring that persons diverted from prosecution for committing acts of domestic violence (divertees) are complying with the terms of their diversion;
- Divertees are not always attending treatment programs that provide counseling specifically for violent behavior;
- Sometimes diverttees attend treatment programs that require only a few counseling sessions; and
- The courts in some counties are granting diversion to defendants who are not eligible.

### Background

In 1979, the Legislature enacted a diversion program specifically designed to allow judges to divert some defendants in misdemeanor domestic violence cases from criminal proceedings and into treatment programs. Under current law, diverttees must be referred to batterers' treatment counseling specifically designed to address the violent conduct of the defendant unless the court determines that no batterers' treatment programs are available.

Once the divertee successfully completes the diversion program, the arrest is deemed never to have occurred. However, criminal proceedings can be reinstated if the divertee fails to comply with the terms of his or her diversion by not performing satisfactorily in the assigned program, not benefiting from diversion, or being convicted of a violent offense while diverted.

Once a prosecutor determines that a defendant is eligible for diversion, the court refers the case to the county probation department if the defendant consents and waives his or her right to a speedy trial. The probation department provides the court with its opinion on whether the defendant would benefit from a treatment program and which treatment programs would accept the defendant. Judges may order defendants into diversion programs only after considering the nature of the victim's injury, any previous incidents of domestic violence, any factors adversely influencing the likelihood of the defendant's success in the diversion program, and the probation department's recommendations.

**Inadequate  
Monitoring of  
Domestic  
Violence  
Diversion  
Cases**

In our review of five counties, we found that probation departments do not regularly monitor defendants granted diversion through the domestic violence diversion program. For example, of the cases we reviewed in the five counties, we found that 165 (54 percent) of the 304 cases active for longer than four months had no evidence of contact between the probation department and the divertee for at least four months. Without regular monitoring, probation departments may be unaware of instances when divertees do not comply with the terms of their diversion and may, thus, lack relevant information to report promptly to the courts. When probation departments do not promptly report instances of non-compliance to the courts, the courts do not have the information necessary to determine whether to reinstate criminal proceedings or to continue diversion. Moreover, delays in reporting may hinder prosecutors' attempts to convict defendants against whom criminal proceedings are reinstated.

**Attendance at  
Inappropriate  
Treatment  
Programs and  
at Programs  
That Consist of  
Only a Few  
Treatment  
Sessions**

County probation departments are not always requiring divertees to attend treatment programs specifically tailored for violent behavior, as required by law. Of the 95 treatment programs we reviewed in five counties, 46 (48 percent) are not specifically batterers' treatment programs. Thus, some divertees may not be receiving appropriate counseling to address their violent behavior. We also found that neither current law nor county probation department policies in the five counties we visited provide requirements for the minimum time a divertee should receive batterers' treatment. For example, during our review of the five counties, we documented treatment programs that lasted for only a few assessment sessions and treatment programs that required weekly attendance for one year.

**Granting of  
Diversion to  
Some Ineligible  
Defendants**

Some courts in the five counties we visited divert defendants from prosecution even though the defendants are ineligible for the domestic violence diversion program. Twenty-seven percent of the defendants in our sample who were granted domestic violence diversion were ineligible for diversion. As a result, some defendants are not being prosecuted as intended by the Legislature.

**Recommendations**

To ensure that domestic violence diversion cases are better monitored and that divertees attend appropriate treatment programs, the five county probation departments we visited should take the following actions:

- Develop and/or implement clear and comprehensive procedures for managing domestic violence diversion cases. These procedures should include a requirement that the probation department maintain regular contact with the divertee or the divertee's treatment provider;
- If the divertee is not attending a batterers' treatment program or is not progressing satisfactorily in the diversion program, promptly request a court hearing to determine whether criminal proceedings should be reinstated against the divertee; and



- Refer divertees specifically to batterers' treatment programs. If a batterers' treatment program is not available, inform the court so that the judge can place the divertee in another appropriate treatment program.

The Legislature should amend Section 1000.6 et seq. of the Penal Code to require counties to develop standards for batterers' treatment programs, which may include a minimum period of treatment or counseling sessions.

To prevent ineligible defendants from being diverted from prosecution, the courts in the five counties we visited should not divert ineligible defendants, including those against whom charges of violating Sections 245(a) or 273.5 of the Penal Code are pending.

#### **Agencies' Comments**

We gave copies of the draft report to the probation departments in Glenn, Los Angeles, Sacramento, San Diego, and San Francisco counties. In written responses, the probation departments in Los Angeles, Sacramento, and San Francisco generally agree with our conclusions and have taken or will take action to correct the identified deficiencies. Furthermore, the San Francisco County Probation Department stated that it could provide closer supervision of its domestic violence diversion cases if it had more resources. The probation departments of Glenn and San Diego counties did not respond in writing.

We also gave copies of the draft report to the Glenn County Justice Court and to the four judicial districts in San Diego County (San Diego, North County, El Cajon, and South Bay). In its written response, the Glenn County Justice Court disagrees with the Legislative Counsel's opinion that granting informal diversion is beyond the court's jurisdiction.

The Municipal Court of the San Diego Judicial District, in its written response, generally agrees with our analyses of ineligible divertees. However, this district asks that we clarify that San Diego County is divided into four judicial districts and that some of the findings apply to the other three districts. The other three districts did not respond in writing to the draft reports they received.

Finally, we gave copies of the draft report to municipal courts in Los Angeles, Sacramento, and San Francisco counties. The Sacramento Municipal Court, in its written response, confirmed modifications made in the report based on discussions between the court and the Office of the Auditor General. The courts in Los Angeles and San Francisco counties did not respond in writing.

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## Introduction

In 1979, the Legislature enacted a diversion program designed to allow judges to divert defendants charged with misdemeanor offenses of domestic violence (divertees) from criminal proceedings and into treatment programs. The purpose of this program is to prevent further domestic violence by requiring these individuals to attend treatment programs specifically designed to address their violent behavior.

Section 1000.6 et seq. of the Penal Code, which established the domestic violence diversion program, became effective on January 1, 1980. On September 26, 1985, the Commission on State Mandates determined that this legislation imposed a new program on the counties. Consequently, any county incurring increased costs as a result of this legislation is eligible to claim reimbursement from the State for these costs. The Commission on State Mandates subsequently developed a statewide county cost estimate of \$6.5 million for the period from July 1, 1980, to June 30, 1989. According to the State Controller's Office, as of October 27, 1989, 35 counties had filed claims with the State totaling over \$5.8 million.

Section 1000.6 of the Penal Code defines domestic violence as intentionally or recklessly causing or attempting to cause bodily injury to a family or household member or placing a family or household member in reasonable apprehension of imminent serious bodily injury. In addition, this section of the Penal Code defines a family or household member as "a spouse, former spouse, parent, any other person related by consanguinity [blood],

or any person who regularly resides or who within the previous six months regularly resided in the household.” Children are not considered household members under this statute. Persons arrested for child abuse are prosecuted under different Penal Code sections and are not eligible for domestic violence diversion.

**Eligibility for the Program**

To be eligible for diversion from criminal proceedings, the defendant must be charged with, or have had charges reduced to, a misdemeanor count of domestic violence; must not have been convicted of any offense involving violence within seven years of the present offense; must not have failed to complete probation or parole; and must not have been diverted under the domestic violence diversion proceedings within five years of the present offense. The prosecutor must determine if the defendant is eligible for diversion and notify the court, the defendant, and the defense attorney of his or her eligibility.

When a defendant is eligible for diversion, the court refers the case to the county probation department. The probation department provides the court with its opinion on whether the defendant would benefit from a treatment program. The probation department also assesses which treatment program would be of benefit to the defendant and which program would accept the defendant.

Judges may grant defendants diversion only after considering the nature of the victim's injury, any prior incidents of domestic violence by the defendant, any factors adversely influencing the likelihood of the defendant's success in the diversion program, and the probation department's findings and recommendations. The judge may order the defendant to pay all or part of the costs of the treatment program. The period during which criminal proceedings may be diverted is no less than six months nor longer than two years.

**Other Methods  
of Deferring  
Prosecution**

In addition to the provisions of Section 1000.6 et seq. of the Penal Code, some prosecutors and judges are granting “informal diversion” to defendants charged with domestic violence offenses. As with diversion under Section 1000.6 et seq. of the Penal Code, legal proceedings are delayed while the alleged offender undergoes batterers’ treatment; however, the probation departments are not involved in the informal diversion process. For example, prosecutors in Glenn County grant informal diversion to alleged domestic violence offenders. Also, prosecutors in Sacramento County granted informal diversion to alleged domestic violence offenders before criminal charges were filed, although prosecutors have discontinued this practice. Furthermore, some courts in Glenn and San Diego counties grant informal diversion by delaying legal proceedings while a defendant accused of domestic violence attends a batterers’ treatment program.

According to a legal opinion by the Legislative Counsel, prosecutors can decline to prosecute a defendant on the condition that the defendant participate in a treatment program. However, according to the Legislative Counsel, once criminal charges have been filed, a court does not have the authority to delay criminal proceedings for this purpose since the Legislature determined the exclusive procedures for judicial grants of diversion by enacting Section 1000.6 et seq. of the Penal Code. We issued a management letter to the presiding judge at the courts where we determined that informal diversion is being granted in the five counties we reviewed recommending that this practice be discontinued.

**Completion of  
the Diversion  
Process**

Once the divertee successfully completes the diversion program, the arrest is deemed never to have occurred. The divertee then may indicate, in response to any question concerning a criminal record, that he or she was not arrested or diverted for the offense for which he or she was diverted. The record of an arrest resulting in successful completion of a diversion program cannot, without the divertee’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

If the prosecuting attorney, the court, or the probation department is dissatisfied with the divertee's performance in the diversion program, if the divertee is not benefiting from counseling, or if the divertee is convicted of any offense involving violence, criminal proceedings can be reinstated against the divertee. Upon request by the probation officer or the court, a court hearing must be held to determine whether the criminal proceedings should be resumed.

### **County Domestic Violence Diversion Programs**

We conducted a statewide survey and determined that 55 of the State's 58 counties have established domestic violence diversion programs. The county probation departments monitor the diversion cases in 54 of the 55 counties that established domestic violence diversion programs; the sheriff's department in the remaining county monitors its diversion cases. Nineteen counties refer divertees to the county mental health department for batterers' treatment. At the time of our review, 22 county probation departments maintained statistics on their programs, and 25 county probation departments used automated systems for managing their cases. However, none of the counties had evaluated their domestic violence diversion programs.

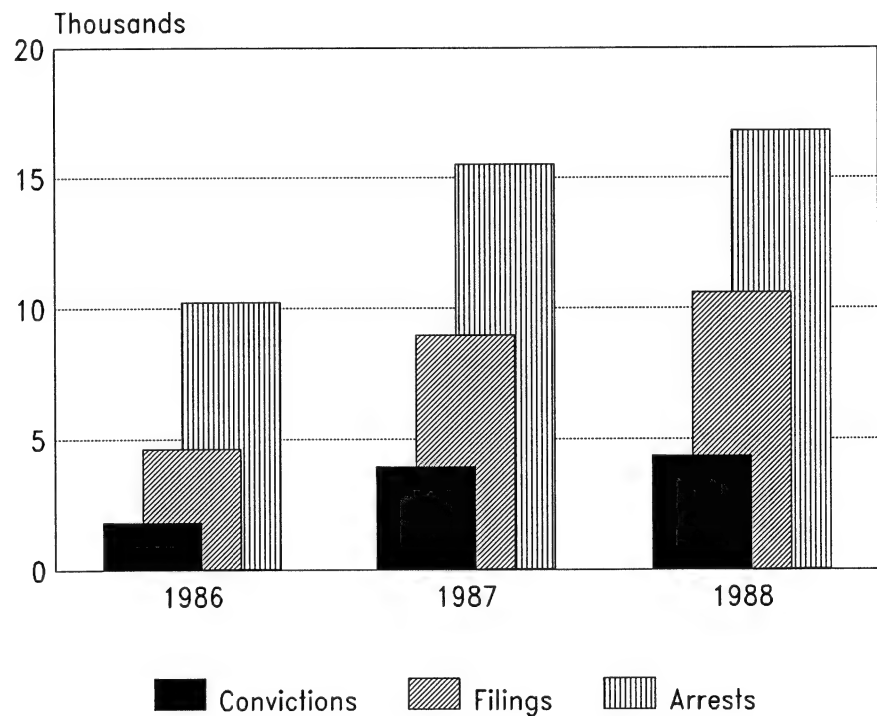
### **Increase in Some Types of Domestic Violence Offenses**

The Bureau of Criminal Statistics and Special Services of the California Department of Justice provides information on felony domestic violence cases under Section 273.5 of the Penal Code in California. Section 273.5 of the Penal Code states that any person who willfully inflicts a bodily injury resulting in a traumatic condition upon his or her spouse, cohabitant of the opposite sex, or mother, father, or child is guilty of a felony. "Traumatic condition" is defined as a wound or internal or external injury, whether minor or serious, which is caused by physical force.

Although a person charged with a violation of Section 273.5 cannot be diverted under Section 1000.6 of the Penal Code (the domestic violence diversion program), the criminal charges can

be reduced to a divertible misdemeanor, qualifying the defendant for diversion. In fact, in the five counties we visited, 58 percent of those placed on diversion were initially charged with a violation of Section 273.5 of the Penal Code. As Chart 1 shows, felony arrests for domestic violence complaints filed and convictions for violations of Section 273.5 of the Penal Code in California have increased steadily since 1986. See Appendix A for a detailed presentation of the statistics for domestic violence felony arrests and dispositions under Section 273.5 of the Penal Code for all 58 counties in California from 1986 through 1988.

**Chart 1 Arrests and Dispositions for Felony Domestic Violence (Section 273.5 of the Penal Code)—Unaudited**



Source: California Department of Justice, Bureau of Criminal Statistics and Special Services.

Note: For limitations on this information, see Appendix A.

**Scope and Methodology**

The purpose of this audit was to review the administration of the domestic violence diversion program established in Section 1000.6 et seq. of the Penal Code. We visited probation departments in five counties, both rural and urban, in northern and southern California, and we reviewed case files of defendants who were diverted from criminal proceedings between January 1, 1986, and May 31, 1989. We also interviewed prosecutors, judges, and treatment providers in these five counties.

To determine the number of defendants who were granted domestic violence diversion during the review period, we obtained or created lists of divertees from the county probation departments in Glenn, Los Angeles, Sacramento, San Diego, and San Francisco counties. These lists contained the names of divertees who were currently being supervised by the county probation departments (active cases) and of those whose diversion was terminated (closed cases) as of May 31, 1989, for each county except Sacramento. For Sacramento County, we created a list of these divertees as of May 15, 1989. Based on these lists, we reviewed a random sample of active and closed domestic violence diversion cases from all five counties.<sup>1</sup>

Although the Los Angeles County Probation Department provided us with lists of divertees, it gave us an unreliable list of all the domestic violence diversion cases that were closed for the two area offices we visited: the Crenshaw Area Office and the East San Fernando Valley Area Office. In our attempt to validate the lists' reliability, we reviewed the court calendars for two months in two divisions of the Los Angeles Municipal Court and for two months in one division of the San Fernando Municipal Court. Listed on these calendars were 25 closed cases of domestic

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<sup>1</sup> At some sites, because the number of cases was small, we reviewed every case.



violence diversion that we did not find on the lists provided by the county probation department. The county probation department could not provide probation records or case files for any of these 25 closed diversion cases. We issued a management letter to Los Angeles County recommending that the county ensure that its established recordkeeping procedures are followed.

To determine the number of contacts between probation departments and diverttees, we reviewed a random sample of domestic violence diversion case files at each of the probation department sites, based on a 90 percent confidence level. We also used this sample of case files to identify the treatment programs that the diverttees attended and to identify the cases in which the defendant appeared to be ineligible for diversion. Additional evidence concerning a defendant's eligibility may be presented at a court hearing. This evidence may not be reflected in the probation department's file. Thus, a defendant who appears ineligible based on the probation department's file may be found eligible during the hearing.

To determine subsequent arrest data for the diverttees in our samples, we obtained criminal history reports from the California Department of Justice. We also contacted the court where the diversion case was heard to obtain additional data on cases in which criminal proceedings against a diverttee were reinstated.

To determine the type of treatment or counseling provided by each of the treatment providers identified, we contacted the provider and obtained a description of the treatment program, the approximate duration of the program, and the cost of the program to the diverttee. Our review of the costs of treatment programs in the five counties we visited indicate that some provided counseling for no fee, and some treatment programs cost over \$1,000.

To determine the number of arrests and convictions for domestic violence under Section 273.5 of the Penal Code, we

obtained statistics from the California Department of Justice. We obtained data for the period from 1986 through 1988 for each county in the State. These totals appear in Appendix A of this report.

To determine the number of divertees in diversion programs statewide, we submitted a written questionnaire to each county's chief probation officer, except in those counties that we visited. We tabulated the totals from all of the counties that returned our questionnaire. These totals appear in Appendix B of this report.

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## **Chapter 1   Probation Departments in the Counties We Reviewed Are Not Adequately Monitoring Their Domestic Violence Diversion Cases**

### **Chapter Summary**

According to a report by the National Institute of Justice,<sup>1</sup> the success of the domestic violence diversion program requires that probation departments closely monitor defendants granted diversion (divertees), including contacting diverttees regularly to gather information and reporting to the court violations of the terms of diversion. However, in our review of five counties, we found that the probation departments and diverttees are not maintaining regular contact. As a result, the probation departments may not be aware of instances when diverttees do not comply with the terms of their diversion and, thus, may not promptly report these instances to the courts. When probation departments do not promptly report violations of the terms of diversion, courts do not have the information necessary to determine whether to reinstate criminal proceedings or to continue diversion. Further, delays in reporting may hinder attempts to convict defendants against whom criminal proceedings are reinstated.

### **Lack of Regular Contact With Divertees**

Section 1000.7(b) of the Penal Code requires county probation departments to investigate the background of defendants referred by the court for possible diversion, to determine appropriate and available batterers' treatment programs for these defendants, and to report their determination to the court for consideration. In addition, the 1985 California Court of Appeal decision in the case of County of Orange vs. State Board of Control states that probation departments are required to monitor do-

mestic violence diversion cases. Furthermore, the orders issued by most courts require the divertee to comply with probation department procedures, including procedures that require contact between the divertee and the probation department. According to a report by the National Institute of Justice, the effectiveness of diversion depends upon, among other things, close monitoring by probation officers. This includes “monitoring the offender’s compliance with probation conditions by gathering information from the offender, the victim, and the counselor.”

Of the five counties we visited, probation departments in Glenn, Los Angeles, and Sacramento counties have monitoring procedures that require divertees to report monthly to the probation department. However, of the 120 cases in our sample that were active for more than four months during our review period at these three county probation departments, we found that 94 cases (78 percent) had no evidence of contact between the probation department and the divertee for more than one month. Moreover, we found that 48 (40 percent) of the 120 cases had no evidence of contact for at least four months. For example, in one case at the Crenshaw Area Office of the Los Angeles County Probation Department, the probation department had not maintained contact with a divertee for over one year.

The San Diego and San Francisco county probation departments had no monthly contact requirement, and we found that 117 (64 percent) of the 184 cases we reviewed that were active for more than four months had no evidence of contact between the probation department and the divertee for at least four months. Overall, in the five counties we visited, 165 (54 percent) of the 304 cases had no evidence of contact for at least four months. Table 1 presents the number of domestic violence diversion cases in our sample that were active for more than four months in which a probation department failed to contact a divertee or the divertee’s treatment provider for at least four months.

**Table 1**      **Contacts Between County Probation Departments and Domestic Violence Divertees and Treatment Providers (Cases In Our Sample Active More Than Four Months During Our Review Period)**

County Probation Department	Domestic Violence Diversion Cases Reviewed	Domestic Violence Diversion Cases Without Contact for More Than Four Months	Percent of Cases
Glenn	24	9	38%
Los Angeles (Crenshaw Area Office) <sup>a</sup>	28	10	36
Los Angeles (East San Fernando Valley Area Office) <sup>a</sup>	15	7	47
Sacramento	53	22	42
San Diego <sup>b</sup>	93	76	82
San Francisco <sup>b</sup>	91	41	45
<b>Totals</b>	<b>304</b>	<b>165</b>	<b>54</b>

<sup>a</sup> Because the Los Angeles County Probation Department could not provide a reliable list of closed cases at the two area offices we visited, we did not review any closed cases at these sites.

<sup>b</sup> The San Diego and San Francisco county probation departments do not require periodic contacts with domestic violence diverttees.

### **Possible Lack of Awareness of Noncompliance**

When probation departments fail to maintain regular contact with diverttees, the departments cannot ensure that diverttees are progressing satisfactorily in the diversion programs. For example, probation departments may not know whether diverttees are enrolling in or completing batterers' treatment programs. In Sacramento County, the probation department has established requirements that specify the time within which a diverttee must enroll in and complete a treatment program. However, of the 66 active cases we reviewed, diverttees in 62 cases (94 percent) had not complied with the probation department's requirement that a diverttee enroll in a treatment program within one week after being granted diversion.

Of the 23 closed cases we reviewed in Sacramento County, none of the divertees had complied with the probation department's requirement to complete a treatment program within 4 months. However, these cases remained active for an average of 9.4 months before the probation department informed the court of the noncompliance. In one of these cases, a divertee did not enroll in a treatment program during his entire 12-month diversion period. Nevertheless, the probation officer did not request a hearing to reinstate criminal proceedings until after the diversion period had expired. Because the probation department failed to report the noncompliance to the court during the diversion period, the judge may have lacked relevant information to indicate that criminal proceedings should be reinstated. According to the judge, since the diversion period had expired, the court had lost jurisdiction over the case, and the judge, therefore, denied the probation department's request to reinstate criminal proceedings against the divertee even though the divertee had not complied with the terms of the diversion.

In the five counties we visited, we found that only 261 (61 percent) of the 425 divertees whose cases we reviewed attended a treatment program. Of these 425 cases, we reviewed 161 closed cases and found that the courts terminated diversion and dismissed the criminal charges for 83 cases. However, in 27 (33 percent) of the 83 cases terminated and dismissed by the court, we found no evidence that the divertee had completed a treatment program.

**Effect of Late  
Reporting of  
Noncompliance**

A report issued by the National Institute of Justice concludes that the effectiveness of diversion depends upon, among other things, a credible threat of reinstating criminal charges. Furthermore, the report indicates that probation officers should be responsible for bringing the case back before the judge if the offender fails to comply with any of the conditions that were imposed. Section 1000.9 of the Penal Code allows the probation department to request a hearing to report to the court instances of unsatisfactory performance in a diversion program, such as repeated acts of

violence. The court is then required to hold a hearing to determine whether criminal proceedings against the diverttee should be reinstated.

Since probation departments are not closely monitoring the progress of diverttees in the domestic violence diversion program, they may lack relevant information to report to the court instances about noncompliance by the diverttee. When probation departments do not promptly report violations of the terms of diversion, courts may not have the information necessary to determine whether to reinstate criminal proceedings or to continue diversion.

Some prosecutors state that it is more difficult to prosecute a diversion case in which criminal proceedings have been reinstated after a substantial time has passed since witnesses may move and the victim may be more reluctant to testify against the diverttee. Therefore, any delay by the probation officer in reporting subsequent abuse may increase the difficulty of convicting a defendant for the original offense for which he or she was diverted.

Two of the five probation departments we reviewed do not have formal written procedures for promptly reporting instances of noncompliance to the court. In addition, the San Francisco County Probation Department does not have formal procedures for managing domestic violence diversion cases. Instead, according to the director of the Community Services Division, the department uses a probation department job description as its guideline for supervising these cases.

**Conclusion** Probation departments in the five counties we reviewed are not monitoring, through regular contacts, defendants granted domestic violence diversion. As a result, these probation departments are not assured that divertees are entering or completing treatment programs. In addition, without adequate monitoring, probation departments may not be aware of instances when divertees do not comply with the terms of their diversion and, thus, may not promptly report these instances to the prosecutors and the courts. The resulting delay in reporting may hinder prosecutors' attempts to convict defendants against whom criminal proceedings are reinstated for failure to comply with the terms of their diversion.

**Recommendations** To ensure that domestic violence diversion cases are better monitored, county probation departments in the five counties we visited should take the following actions:

- Develop and/or implement clear and comprehensive procedures for monitoring domestic violence diversion cases. These procedures should include contact requirements between the probation officer and the defendant granted domestic violence diversion or the treatment provider; and
- If the divertee is not attending a batterers' treatment program or is not progressing satisfactorily in the diversion program, promptly request a court hearing to determine if criminal proceedings should be reinstated against the divertee.



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## **Chapter 2    Defendants in Domestic Violence Diversion Sometimes Attend Inappropriate Treatment Programs and Programs That Consist of Only a Few Treatment Sessions**

### **Chapter Summary**

Some county probation departments are allowing defendants who are granted domestic violence diversion (divertees) to attend treatment programs other than batterers' treatment programs although the law specifies that they must attend batterers' treatment programs unless the court determines that such programs are unavailable. We reviewed 95 treatment programs for 297 divertees in five counties and found that 46 (48 percent) of the treatment programs were not batterers' treatment programs. Furthermore, of the 297 divertees who attended these programs, 76 (26 percent) attended programs that were not batterers' treatment programs. Because some divertees are attending treatment programs other than batterers' treatment programs, their battering behavior may not be addressed. We also found that neither current law nor the policies of the five county probation departments establish a minimum time divertees should receive batterers' treatment. As a result, some divertees are attending treatment programs that consist of only a few treatment sessions.

### **Divertees Are Not Always Required To Attend Batterers' Treatment Programs**

Section 1000.8 of the Penal Code requires that, if available, divertees be referred to batterers' treatment programs specifically tailored for the divertees' battering behavior. Section 1000.7(b) of the Penal Code requires county probation departments to determine which programs would benefit the defendant and which of those programs would accept the defendant. According to professionals in the field of domestic violence counseling, treatment specifically designed for violent behavior can be successful in preventing a batterer from continuing his or her behavior.

Our review disclosed that county probation departments do not always require divertees to attend treatment programs that are specifically designed for batterers. Of the 95 treatment programs that divertees were referred to in the five counties that we visited, 46 (48 percent) programs were not batterers' treatment programs. Of the 297 divertees who attended these programs, 76 (26 percent) attended treatment programs that did not provide treatment for violent behavior. For example, of the 19 treatment programs we reviewed at the Los Angeles County Probation Department's Crenshaw Area Office, we found that nine did not provide treatment for violent behavior. Rather than attending programs that treat violent behavior, some divertees are attending treatment programs for alcohol abuse or drug abuse. Table 2 compares the number of nonbatterers' treatment programs with the total number of treatment programs that we reviewed in the five counties we visited. It also shows the number of divertees in our sample who were referred to these programs.

Table 2

**The Total Number of Treatment Programs Reviewed  
and Divertees Who Attended These Programs**

County Probation Department	Total Number of Treatment Programs Reviewed	Number of Nonbatterers' Treatment Programs	Percent of Nonbatterers' Treatment Programs	Total Number of Divertees In Treatment Programs	Number of Divertees in Nonbatterers' Treatment Programs	Percent of Divertees Who Attended Nonbatterers' Treatment Programs
San Francisco	26	12	46%	86	19	22%
Sacramento	8	2	25	37	3	8
Los Angeles (East San Fernando Valley Area Office)	15	8	53	28	9	32
Los Angeles (Crenshaw Area Office)	19	9	47	34	13	38
San Diego	23	14	61	86	29	34
Glenn	4	1	25	26	3	11
<b>Total</b>	<b>95</b>	<b>46</b>	<b>48</b>	<b>297</b>	<b>76</b>	<b>26</b>

According to Section 1000.8(a) of the Penal Code, the court can place a diverttee in another appropriate treatment program if the court determines that a batterers' treatment program is unavailable. Of the cases we reviewed in the five counties we visited, we did not find any in which the court determined that a batterers' treatment program was not available. In addition, the probation departments in these counties have not established policies for determining which programs are acceptable as batterers' treatment programs. As a result, some probation officers are sending diverttees to alternative treatment programs such as substance abuse or alcohol abuse. Although diverttees in these alternative programs may receive some type of counseling, the curriculum of the alternative programs is not specifically tailored to address diverttees' violent behavior.

**Variation in  
Duration of  
Programs**

Current law does not provide minimum requirements for the duration of treatment programs for domestic violence diversion cases. Furthermore, the counties that we visited do not specify minimum requirements for the duration of treatment programs. Section 1000.8(c) of the Penal Code requires that the defendant be diverted from criminal proceedings for no less than six months and no more than two years. According to a Legislative Counsel opinion, Section 1000.8(c) of the Penal Code does not require that the treatment program last for a period of six months to two years. Rather, the period during which the charges against the defendant may be diverted is limited to this time.

Although the law does not establish minimum treatment requirements, the program guidelines of the Los Angeles Domestic Violence Council recommend a minimum of one year of weekly treatment sessions for batterers' treatment programs. Moreover, Dr. Anne Ganley, a noted mental health professional whose recommendations for treatment are published in the National Institute of Justice's "Confronting Domestic Violence: A Guide for Criminal Justice Agencies," states that termination from counseling is appropriate only when the client, the victim,

fellow group members, and the counselor are all confident that battering will not recur. According to Dr. Ganley, this typically happens after a counseling period of approximately one year. Thus, treatment programs that consist of only a few sessions may not be sufficient to address the violent behavior of the divertree.

We found that divertrees in the five counties we reviewed attend treatment programs of varying duration. We documented treatment programs that lasted for only a few assessment sessions and treatment programs that required weekly attendance for one year. For example, in San Francisco County, a divertree was successfully terminated from the program by the court after attending two treatment sessions. The treatment provider felt that the divertree no longer had a problem with violence because the divertree was no longer living with the victim.

In some instances, we also found that probation officers are determining when a divertree has completed treatment because treatment programs often do not specify this. For example, in Los Angeles County, a treatment provider had no requirements for the number of sessions divertrees had to attend. As a result, according to the Los Angeles County Probation Department, the probation officers at the Crenshaw Area Office have had to decide when divertrees have attended enough sessions.

**Conclusion** Defendants who are granted domestic violence diversion do not always receive batterers' treatment for their violent behavior because county probation departments are not requiring the divertrees to attend treatment programs specifically designed to treat violent behavior, as required by law. As a result, some divertrees may not be receiving appropriate treatment to address their violent behavior. In addition, neither current law nor the policies of the five county probation departments we visited require minimum treatment periods for violent behavior. For

example, during our review of the five counties, we documented treatment programs that lasted for only a few assessment sessions and treatment programs that required weekly attendance for one year.

**Recommendations**

To ensure that defendants who are granted domestic violence diversion attend appropriate treatment programs, the county probation departments in the five counties we visited should refer divertees to batterers' treatment programs. If a batterers' treatment program is not available, the probation department should inform the court so that the judge can place the divertee in another appropriate treatment program.

The Legislature should amend Section 1000.6 et seq. of the Penal Code to require counties to develop standards for batterers' treatment programs. These standards may include a minimum period of treatment or number of counseling sessions.

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## **Chapter 3      Courts Are Granting Domestic Violence Diversion to Some Defendants Who Are Not Eligible**

### **Chapter Summary**

The Penal Code specifically disqualifies certain defendants from the domestic violence diversion program, including those with recent convictions for violent offenses and those charged with inflicting a traumatic injury on a spouse or cohabitant and assault with a deadly weapon. Nevertheless, our review of probation department case files indicates that some courts in the five counties we visited divert these defendants from criminal proceedings. In our review of 425 defendants who were granted domestic violence diversion (divertees), 113 (27 percent) were ineligible for diversion. When ineligible defendants are diverted from criminal proceedings, they are not being prosecuted as the Legislature intends.

### **Some Ineligible Defendants Are Diverted**

Section 1000.6(a) of the Penal Code describes the conditions under which a defendant cannot be granted domestic violence diversion. These conditions include any conviction for a violent offense within the past seven years, any prior revocation of parole or probation, and any prior domestic violence diversion within the past five years. In addition, the Penal Code prohibits diversion from prosecution when the defendant is charged with a violation of Sections 245(a) (assault with a deadly weapon) or 273.5 (inflicting traumatic injury upon a spouse or cohabitant of the opposite sex or upon the parents of the cohabitant's child) of the Penal Code. Section 1000.6 of the Penal Code prohibits diversion when the victim is a child or when the victim is a person who has not resided with the defendant within the previous six

months. According to an opinion of the Legislative Counsel, in cases when multiple charges are filed, the court must first reduce or dismiss the charges of an offense for which diversion is prohibited before a defendant can be eligible for domestic violence diversion.

In our sample of 425 probation department case files in which domestic violence diversion was granted to defendants, we found 113 cases (27 percent) in which the divertee was ineligible under the provisions of the Penal Code. In 94 of these 113 cases, the court granted diversion to defendants charged with violations of either Section 245(a) or Section 273.5 of the Penal Code. In 66 of these 94 cases, multiple charges were filed, and the court granted diversion on a charge for which diversion is allowed, such as a violation of Section 242 of the Penal Code (simple battery). However, the court did not dismiss the charge of violating either Section 245(a) or Section 273.5 of the Penal Code. The remaining 28 cases were cases in which the only charge at the time of diversion was a violation of either Section 245(a) or Section 273.5 of the Penal Code.

In the remaining 19 of the 113 cases, courts granted diversion to defendants although the victim was a minor, the defendant had recent parole or probation violations, the defendant had recent convictions for violent offenses, or the alleged criminal act did not involve domestic violence. Table 3 identifies the ineligible divertees in our sample by county and by reason for the divertee's ineligibility.



**Table 3**  
**Summary of Cases in Which Domestic Violence Diversion**  
**Was Granted to Ineligible Defendants**

County Probation Department	Number of Domestic Violence Diversion Cases Reviewed	Divertees With Ineligible Criminal Charges <sup>a</sup>	Divertees With Other Reasons for Ineligibility <sup>b</sup>	Total Ineligible	Percent of Total Cases Reviewed
Glenn	30	12	2	14	47%
Los Angeles (Crenshaw Area Office)	47	13	0	13	28
Los Angeles (East San Fernando Valley Area Office)	52	19	1	20	38
Sacramento	87	1	1	2	2
San Diego	99	27	7	34	34
San Francisco	110	22	8	30	27
<b>Total</b>	<b>425</b>	<b>94</b>	<b>19</b>	<b>113</b>	<b>27</b>

Note: These data are based on our review of probation department files.

<sup>a</sup> Ineligible criminal charges include violations of Sections 245(a) (assault with a deadly weapon) and 273.5 (inflicting traumatic injury upon a spouse or cohabitant).

<sup>b</sup> Other reasons for ineligibility include cases in which the victim was a child, the diveree had previously violated parole or probation, and the diveree had been convicted of a violent offense within the past seven years.

Examples of instances when the court apparently granted diversion to ineligible defendants include one case in San Diego County in which the defendant was diverted after having allegedly attacked his eleven-year old daughter. In this case, the court did not request or review a report from the county probation department before granting diversion. This type of report typically includes information about the defendant's suitability for diversion. According to an opinion of the Legislative Counsel, courts are required to review such reports before granting or denying diversion. The county probation department subsequently noted in its first progress report to the court in this case that the divertee was an "inappropriate referral." Also, in Glenn County, one defendant was diverted after allegedly burglarizing the home of his ex-spouse while she was not home. Although no violence was noted in the police report or the probation department's reports to the court, the court granted the defendant diversion under Section 1000.6 of the Penal Code.

In San Diego County, our review of probation department case files indicates that some courts in some judicial districts granted diversion to defendants without the benefit of a report prepared by the probation department. One judge in San Diego County stated that, in his interpretation, Section 1000.6 of the Penal Code does not require the court to request such a report before granting diversion.

The Legislature has determined that defendants charged with certain offenses, as well as defendants with particular criminal backgrounds, should not be diverted under the domestic violence diversion statute. Because the courts sometimes grant domestic violence diversion to these ineligible defendants, they are not being prosecuted as intended by the Legislature.

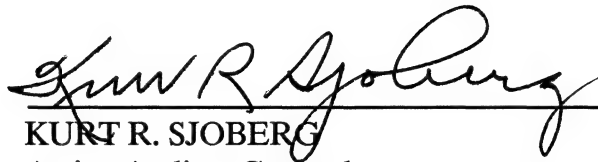
**Conclusion** Some courts are granting domestic violence diversion to defendants who are not eligible for diversion under Section 1000.6 of the Penal Code. We found that 113 (27 percent) of the 425 defendants in our sample who were granted domestic violence diversion in the five counties we visited were not eligible for diversion. When ineligible defendants are diverted from criminal proceedings, they are not being prosecuted as the Legislature intends.

**Recommendations** To prevent ineligible defendants from being diverted from prosecution, the courts in the five counties we visited should not divert ineligible defendants, including those against whom charges of violating Sections 245(a) or 273.5 of the Penal Code are pending.

In addition, all of the courts in San Diego County should request reports from the probation department, as required by Section 1000.8(a) of the Penal Code, before granting or denying diversion to defendants in domestic violence cases.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

  
KURT R. SJOBERG  
Acting Auditor General

Date: January 2, 1990

Staff: Robert E. Christophel, Audit Manager  
Gary L. Colbert  
James D. Lynch, Jr.  
Duane E. Butler  
Colin A. Miller  
Andrew Collada

# Appendix A

## Department of Justice Statistics for Felony Domestic Violence Cases for All 58 California Counties (Section 273.5 of the Penal Code)—Unaudited

County	Number of Arrests			Number of Complaints Filed			Number of Convictions		
	1986	1987	1988	1986	1987	1988	1986	1987	1988
Alameda	376	662	595	159	268	310	49	63	57
Alpine	0	1	0	0	0	0	0	0	0
Amador	6	10	14	6	10	12	2	3	3
Butte	14	27	40	7	19	31	3	7	8
Calaveras	12	19	33	7	12	16	0	0	1
Colusa	3	5	3	1	3	3	0	0	0
Contra Costa	75	119	154	13	22	45	2	8	18
Del Norte	17	44	82	9	36	70	3	4	7
El Dorado	21	46	61	9	38	52	2	11	16
Fresno	221	457	496	148	298	313	39	39	38
Glenn	0	3	6	0	3	6	0	0	2
Humboldt	104	156	201	85	121	166	7	26	27
Imperial	13	8	21	5	6	14	0	1	5
Inyo	7	15	9	3	15	7	2	9	3
Kern	472	906	914	422	821	846	313	598	581
Kings	14	49	67	13	37	55	4	8	5
Lake	24	57	72	11	34	48	3	18	18
Lassen	0	9	7	0	5	5	3	0	3
Los Angeles	5,185	6,152	5,718	1,235	3,004	2,919	589	1,780	1,593
Madera	6	17	40	6	17	39	4	4	19
Marin	49	69	89	20	39	62	5	8	14
Mariposa	2	7	5	1	6	5	0	3	2
Mendocino	16	23	31	11	19	31	3	7	11
Merced	15	23	39	9	18	36	5	5	13
Modoc	3	3	9	3	2	6	1	0	0
Mono	3	5	8	1	4	5	0	1	1
Monterey	365	537	476	352	489	450	51	48	79
Napa	13	57	86	12	54	76	12	18	17
Nevada	9	19	28	6	15	24	3	2	2
Orange	119	209	322	65	126	222	23	44	73

## Appendix A Continued

County	Number of Arrests				Number of Complaints Filed				Number of Convictions			
	1986	1987	1988	1988	1986	1987	1988	1988	1986	1987	1988	1988
Placer	55	85	137	137	35	73	117	117	8	20	45	45
Plumas	1	3	8	8	1	3	8	8	0	3	3	3
Riverside	154	395	460	460	53	166	174	174	21	35	42	42
Sacramento	866	1,130	1,240	1,240	759	844	1,067	1,067	264	400	581	581
San Benito	8	13	25	25	4	5	9	9	0	3	3	3
San Bernardino	120	299	519	519	38	74	146	146	8	15	42	42
San Diego	387	699	985	985	116	254	471	471	52	68	150	150
San Francisco	274	716	826	826	110	251	295	295	28	92	122	122
San Joaquin	129	266	274	274	116	246	261	261	32	56	101	101
San Luis Obispo	26	56	90	90	18	47	75	75	4	10	19	19
San Mateo	113	209	184	184	108	197	170	170	28	53	44	44
Santa Barbara	86	164	214	214	76	111	176	176	23	30	44	44
Santa Clara	305	867	724	724	187	347	523	523	98	218	239	239
Santa Cruz	82	104	173	173	58	102	155	155	11	18	11	11
Shasta	24	63	104	104	24	63	102	102	6	16	24	24
Sierra	1	2	2	2	1	2	2	2	0	0	2	2
Siakiyou	0	10	34	34	0	9	30	30	0	3	8	8
Solano	137	183	244	244	64	88	180	180	24	28	42	42
Sonoma	82	211	227	227	69	158	167	167	5	10	20	20
Stanislaus	47	164	237	237	29	138	210	210	26	40	59	59
Sutter	9	16	11	11	8	16	10	10	2	5	3	3
Tehama	13	24	28	28	12	24	26	26	2	4	6	6
Trinity	2	4	10	10	1	4	10	10	1	3	3	3
Tulare	35	67	86	86	16	37	75	75	9	14	35	35
Tuolumne	3	3	2	2	2	3	2	2	0	0	1	1
Ventura	60	180	245	245	39	116	165	165	19	43	67	67
Yolo	47	58	71	71	44	49	66	66	15	23	17	17
Yuba	33	23	41	41	29	22	40	40	5	14	17	17
<b>Total</b>	<b>10,243</b>	<b>15,528</b>	<b>16,817</b>	<b>16,817</b>	<b>4,636</b>	<b>8,990</b>	<b>10,606</b>	<b>10,606</b>	<b>1,819</b>	<b>3,939</b>	<b>4,366</b>	<b>4,366</b>

Source: Department of Justice, Bureau of Criminal Statistics and Special Services. For limitations on this information, please see the following page.

**Data  
Limitations**

According to the California Department of Justice, the following general information and limitations should be considered when using the data in this appendix.

1. The table contains case disposition data based on information provided to the California Department of Justice (department) before April 25, 1987 (for 1986 dispositions), April 24, 1988 (for 1987 dispositions), and February 10, 1989 (for 1988 dispositions). Therefore, these data may not contain all final dispositions.
2. An important difference between the arrest and the disposition data is that arrest data are based on the year in which the defendants were arrested while the disposition data are based on the year in which the defendants' cases were disposed. Consequently, the disposition of a case may be reported a year or more after the actual arrest in the case.
3. The actual number of case dispositions that law enforcement agencies reported to the department may be slightly higher than what is included in the department's statistics since intermediate dispositions (such as suspended proceedings and reopened cases) are excluded in the department's statistics.
4. If a person is arrested and charged with multiple offenses, only the disposition with the most serious possible penalty is included. Similarly, the department's statistics include dispositions for only the most serious offense charged, based on the severity of possible punishment. Therefore, the arrest offense and the disposition offense may not necessarily correspond.
5. Comparison of county data should be made with caution since the level of reporting may vary by jurisdiction and from year to year. The data in the table do not represent the total number of adult felony arrest dispositions during 1986, 1987, or 1988. The department estimates that the information presented in the table is underreported by 30 to 40 percent.

**Appendix B      The Number of Domestic Violence Diversion Cases by County,  
January 1, 1986 Through January 1, 1989--Unaudited**

Domestic Violence Diversion Cases as of January 1st Each Year					Percent Change 1986-1989
County	1986	1987	1988	1989	
Alameda	87	107	102	150	72%
Alpine	0	0	0	0	--
Butte	26	36	33	35	35
Colusa	3	5	4	3	0
Contra Costa	15	16	17 <sup>a</sup>	17 <sup>a</sup>	13
El Dorado	0	16	26	43	--
Fresno	165	297	386	311	88
Humboldt	42	76	138	126	200
Imperial	10	4	13	21	110
Kings	10	10	10	10	0
Madera	35	61	68	69	97
Marin	--	--	8	33	--
Mariposa	2	3	6	7	250
Mendocino	8	17	30	48	500
Merced	--	7	29	59	--
Monterey	--	--	328	457	--
Napa	17	65	98	83	388
Nevada	3	8	22	67	2,133
Orange	139	181	178	295	112
Plumas	4	6	6	8	100
Riverside	52	47	117	256	392
San Bernardino	--	--	--	78 <sup>b</sup>	--
San Luis Obispo	39	46	97	195	400
San Mateo	0	0	0	125	--
Santa Barbara	50	126	160	296	492
Santa Clara	43	76	314	420	877
Santa Cruz	--	--	--	12	--
Shasta	--	64	177	136	--
Sierra	0	2	3	1	--
Siskiyou	4	1	11	11	175
Tehama	3	6	6	29	867
Trinity	0	0	1	2	--
Tulare	47	48	109	235	400
Yolo	--	--	--	110	--
Yuba	--	--	30 <sup>a</sup>	10 <sup>a</sup>	--

Source: Survey of county probation departments conducted by the Office of the Auditor General in 1989.

Note: The counties that did not provide data were omitted from the table.

a These data are estimates.

b This datum is as of September 1, 1989.





**BARRY J. NIDORF**  
Chief Probation Officer

## COUNTY OF LOS ANGELES PROBATION DEPARTMENT

9150 EAST IMPERIAL HIGHWAY — DOWNEY, CALIFORNIA 90242  
(213) 940-2501

December 14, 1989



Kurt R. Sjoberg, Acting Auditor General  
State of California  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, CA 95814

Dear Sir:

This is in response to your letter to Richard Dixon, Chief Administrative Officer, dated December 7, 1989. I appreciate your sharing the audit findings and the opportunity to respond prior to finalization of your report.

The recommendations you make are consistent with departmental policy in each and every area. The audit is helpful since it pinpoints areas where we need to employ greater management control.

We are in the process of developing a new adult manual which will include specific procedural guidelines for supervising domestic violence diverttees. Pending the manual publication I will issue formal directives reminding staff of the need to comply with mandated requirements. Among the instructions will be one which will mandate use of a service directory published by the Los Angeles County Domestic Violence Council in referring domestic violence diverttees.

My staff and I are available to discuss these issues in further detail should you require further information.

Sincerely,

**BARRY J. NIDORF**  
Chief Probation Officer

BJN:vmh

cc: Richard Dixon  
Chief Administrative Officer



# COUNTY OF SACRAMENTO

## PROBATION DEPARTMENT

ROBERT E. KELDGORD  
CHIEF PROBATION OFFICER

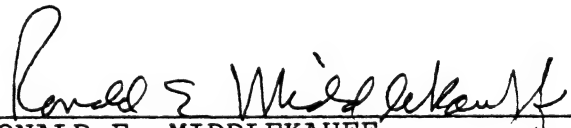
LEONARD BROWN  
ASSISTANT CHIEF PROBATION OFFICER

711 E STREET • SACRAMENTO, CALIFORNIA 95814 • TELEPHONE (916) 440-6311

### Response to Auditor General's Report On Domestic Violence Diversion

We have reviewed a draft of this report and appreciate the opportunity to have done so prior to its release.

The report accurately reflects the conditions as they existed seven months ago and we have taken measures to address the concerns raised in the report.

  
\_\_\_\_\_  
RONALD E. MIDDLEKAUFF  
CHIEF DEPUTY

Date: 12/13/89



**ARLENE M. SAUSER**  
CHIEF ADULT PROBATION OFFICER

December 11, 1989

Kurt R. Sjoberg, Acting Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Sjoberg:

I have read the draft of your report entitled, "The Administration of the State's Domestic Violence Diversion Program Could Be Improved," and I have the following comments.

I agree that clear procedures are important for the proper administration of diversion programs, and that divertees should be referred to batterer's treatment. Monitoring of a divertee's progress on diversion is also important, but this Department would require additional resources before it could provide close supervision of diversion cases.

In response to your audit of this Department, we have formalized our diversion duty statement into a policy on the investigation and monitoring of domestic violence diversion cases. It requires that divertees be referred for batterer's treatment (unless they require detoxification first) and that they give the probation officer periodic verification of their participation in treatment. The policy also contains guidelines for the probation officer to follow in monitoring the compliance of divertees. New crimes and victim's complaints require immediate action. Issues of the divertee's compliance with the treatment order are generally to be handled in the regularly scheduled progress reports. Given the size of the diversion caseload (120 diversion cases and 50 convicted domestic violence offenders for one officer), this is a realistic level of supervision. It is also consistent with the Department's policy of supervising most closely those clients who present the highest risk. Divertees, not having been convicted, are a lower risk category than convicted violent offenders. (Divertees do get closer supervision than most misdemeanants in this Department, who are assigned to caseloads ranging from 300 to 600 probationers each.)


Kurt R. Sjoberg  
December 11, 1989  
Page two

However, were we to receive funds from the State or from some other source to permit the supervision of diverttees in caseloads of 50 or less, we would obviously be able to exercise much tighter control over their performance on diversion.

Finally, a recommendation to the Legislature for a lengthy mandated minimum treatment period for diverttees raises some concerns. The needs of diverttees vary greatly. Treatment resources, at least in San Francisco, are scarce for the probation population. A minimum treatment period (one year is mentioned in the draft) might make it more difficult for us to place diverttees in programs at all.

In closing, I want to thank you for the opportunity to review and respond to your draft report. I hope that my comments are useful to you.

Sincerely,

  
Arlene M. Sauser, Chief  
Adult Probation Officer

AMS:TJ:mwc

1550R

# JUSTICE COURT

GLENN COUNTY JUDICIAL DISTRICT

WILLOWS, CALIFORNIA

☐ WILLOWS BRANCH  
543 W. Oak St.  
Willows, CA 95988  
Telephone: 934-3189

ANGUS I. SAINT-EVENS  
Judge

☐ ORLAND BRANCH  
Co. Rd. 200, Co. Bldg.  
P.O. Box 577  
Orland, CA 95963  
Telephone: 865-9691

December 13, 1989

Mr. Kurt R. Sjoberg  
Acting Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, California 95814

Re: Draft report by Auditor General on  
Domestic Violence Diversion

Dear Mr. Sjoberg:

I have read and reviewed the above mentioned draft report and will take this opportunity to comment on same.

1. On page three(last 2 lines of second paragraph): While informal diversion is sometimes used, its use is not confined to domestic violence situations and when it is not for mandating batterers' treatment and if so the supervision of that is not with the court but would be with the District Attorney's Office. I can only assume that this comment is somehow derived from my letter (paragraph 11) or my conversation with Mr. Lynch at no time did I intend to leave the impression that this is what happens all the time in Glenn County. In this respect I note that you issued a "management letter" to the court forbidding such a practice, this court has never received such a letter. ① In any event I feel that the Legislative Counsels analysis is incorrect in that it assumes that because Penal code section 1000.6 is not being followed the courts are somehow involved in the process, in actuality what happens is that the defendant waives time for trial for the period of 6-12 months and then the DA moves to dismiss.

2. In some cases other forms of or procedures of diversion are granted as authorized by statute. see Penal Code Section 1000 et. seq.

3. I am assuming that the actual data you are using for Glenn County comes in fact from Glenn County, however to my knowledge no one has reviewed any court document and thus the records must have come from the probation

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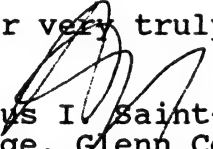
① The Office of the Auditor General's management letter was sent to the judge on December 14, 1989.

department(who may not have the final disposition in some cases e.g. a reduction/dismissal from a 245a to a charge that is in fact divertible.)<sup>(2)</sup> Furthermore, this data for my small court seems to be of more cases than I can recall. I would like the opportunity of knowing what are the actual case names in order to verify the same, it should only take less than one day. It may very well be that some of the case have been handled by the Superior court.<sup>(3)</sup>

As you can see your report with the short response time has caused me some serious concerns not only about the report itself but also the fact that this court may be acting in excess of its jurisdiction. Regardless of the report submitted by you to the state I would like to know the actual cases names so that efforts can be made to correct the situation and/or conduct an analysis as to how these discrepancies occur and thus be able to prevent them in the future.<sup>(3)</sup>

Lastly, diversion is an effective tool available to the courts in dealing with an ever increasing case load and in particular Domestic Violence Diversion is a valuable tool for the courts in responding the the increasing numbers of persons who are committing domestic violence.

Your very truly,

  
Angus I. Saint-Evens  
Judge, Glenn County Judicial District

Faxed 12-18-89 (916) 327-0019 and mailed 12-18-89

---

The Office of the Auditor General's Comments:

- <sup>(2)</sup>The text has been changed to reflect these comments.
- <sup>(3)</sup>The case names requested by the judge were provided on December 18, 1989.

THE MUNICIPAL COURT  
OF THE SAN DIEGO JUDICIAL DISTRICT

PRESIDING DEPARTMENT

COUNTY COURTHOUSE

SAN DIEGO, CALIFORNIA 92101-3877

(619) 531-3019

LOCATION CODE 740

HONORABLE E. MAC AMOS, JR.  
PRESIDING JUDGE



December 14, 1989

Kurt R. Sjoberg  
Acting Auditor General  
Office of the Auditor General  
660 J St., Ste. 300  
Sacramento, CA 94814

Dear Mr. Sjoberg:

I have reviewed a draft copy of your report entitled "The Administration of the State's Domestic Violence Diversion Program Could Be Improved". I do not question the accuracy of the figures contained in your report, but I am concerned about the implication that the San Diego Municipal Court is responsible for placing ineligible people in the diversion program and for diverting people without obtaining a probation report. My investigation reflects that this Court is not responsible for handling cases in this manner.

San Diego County contains four judicial districts. These include San Diego Judicial District, North County Judicial District, El Cajon Judicial District, and South Bay Judicial District. The City Attorney is responsible for the prosecution of misdemeanor domestic violence cases in the San Diego Judicial District. The District Attorney's Office is responsible for prosecution of these cases in the outlying judicial districts. After reviewing your report, I spoke with Deputy City Attorney Casey Gwinn who is in charge of the domestic violence unit in the City Attorney's Office. He advised me that he was aware of no cases where a person had been placed into a diversion program who was ineligible for that program. I also spoke with Cecil Steppe, the Probation Officer for the County of San Diego. Mr. Steppe advised me that the judges in the San Diego Judicial District were obtaining probation reports in all cases.

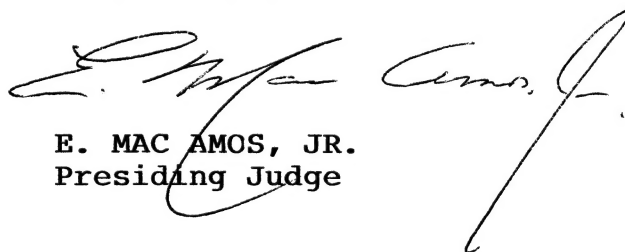
By lumping all of the San Diego judicial districts together and referring to them as "San Diego", the inference is that our Court is improperly applying the diversion law.

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Page Two

This inference is incorrect. ① Both Mr. Gwinn and Mr. Steppe indicated that if the law is being improperly applied, improper applications are occurring in the outlying judicial districts. I believe that your report should reflect this fact to correct the false implication that our Court is not handling these cases properly.

I am sure that Mr. Gwinn and Mr. Steppe will be more than happy to confirm the facts set forth in this letter. Thank you for allowing us the opportunity to review the draft report.

Very truly yours,



E. MAC AMOS, JR.  
Presiding Judge

EMA:sm

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① The Office of the Auditor General's Comment: The text has been changed to reflect these comments.





John R. Lewis, Presiding Judge

The Municipal Court  
Sacramento County Courthouse  
720 Ninth Street  
Sacramento, California 95814

Telephone (916) 440-5238

December 13, 1989

Kurt R. Sjoberg  
Acting Auditor General  
State of California  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

I wanted to take the opportunity to follow up on your letter of December 7, 1989 regarding the draft report titled "The Administration of the State's Domestic Violence Diversion Program Could Be Improved."

Judge Ullman of our Court has had several conversations with members of your staff. It was noted that five (5) Sacramento Municipal Court cases were reflected in the report as being inappropriately diverted. ① We received confirmation from your office that upon further review, two of the cases were not inappropriately diverted. We were also advised that a footnote would be added to reflect that the case reviews were done solely by reviewing probation files and did not consider what occurred at the court hearing either through review of the court file or a transcript of the proceeding. ①

Thank you for the opportunity to review a draft copy of the report prior to publication and for your willingness to make modifications.

Sincerely yours,

John R. Lewis  
Presiding Judge of the Municipal Court

JRL:tg  
121389a

cc: Judge Michael S. Ullman

① The Office of the Auditor General's Comment: The text has been changed to reflect these comments.

cc: **Members of the Legislature**  
**Office of the Governor**  
**Office of the Lieutenant Governor**  
**State Controller**  
**Legislative Analyst**  
**Assembly Office of Research**  
**Senate Office of Research**  
**Assembly Majority/Minority Consultants**  
**Senate Majority/Minority Consultants**  
**Capitol Press Corps**